

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5692 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AGRICULTURE PRODUCE MARKET COMMITTEE

Versus

BOTAD MUNICIPALITY

Appearance:

No one appears for the petitioner - Agriculture Produce Market Committee, Botad.

Mr.D.M. Thakkar for Respondent - Botad Municipality, Botad.

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 06/04/99

ORAL JUDGEMENT

The petitioner Agriculture Produce Market Committee has preferred this Special Civil Application against Botad Municipality, Botad, seeking a writ, order

or direction for quashing and setting aside the Bills at Annexure.A with the Special Civil Application as have been issued by the respondent Municipality for recovering the due amount of House Tax and the Education Cess from the petitioner Committee. The action of the respondent Municipality is sought to be challenged by the petitioner Agriculture Produce Market Committee on the ground that the petitioner Committee is exempted under Section 13 of the Gujarat Education Cess Act, 1962. It is the case of the petitioner Committee that it is a body constituted for Botad market area and all the properties belonging to the market Committee consist of market and administrative office of the market Committee; these properties are used for public purposes, i.e. purposes which have been assigned to the market Committee under the provisions of the Gujarat Agricultural Produce Markets Act, 1963. The petitioner Committee claims to be a local authority and its case is that the Municipality has no right to claim House Tax and Education Cess from the petitioner Committee; while it has been stated in paragraph 4 of the petition that it has paid House Tax under mistake to the respondent although it was not open for the respondent to levy any House Tax or demand any Education Cess from the petitioner Committee which is a local authority under Section 10 of the Act. The petitioner Committee has also challenged the powers of the Municipality under Section 99 of the Gujarat Municipalities Act, 1963 to levy the tax on buildings or lands situated within the Municipality Borough without the express consent of the Government and further that the levy is not leviable in respect of any building or any part of the building belonging to the Government and used solely for public purpose and not used to be or intended to be used for the purposes of profit. It is also the case of the petitioner Committee that the property, namely, the buildings for which the House Tax is demanded belong to the petitioner market Committee and it is used solely for public purpose and the same is neither used nor intended to be used for the purposes of profit.

2. The present petition challenging the Bills issued by the Municipality annexed as Annexure.A collectively with the petition purported to have been issued in 1982-83 with regard to the House Tax and Cess was filed on 9th August 1983 in this Court. On 15th December 1983 while issuing the Rule, it was ordered that this petition be heard with Special Civil Application No.3492 of 1982 and ad-interim relief was granted on the condition that an undertaking is to be filed by the petitioner within four weeks from the date of the order to the effect that in case the petition fails, the petitioner will pay the

aggregate amount of Education Cess together with the penalty within three months from the date of the disposal of the petition. The papers which have been made available to us in this matter do not include any such papers with regard to the undertaking as was ordered by the Court on 15th December 1983 and no one is present on behalf of the petitioner to explain the factual position in this regard. Be that as it may, the fact remains that the matter has remained pending before this Court since 1983 and the Botad Municipality has filed an affidavit-in-reply dated 12th January 1997. The Chief Officer of the Botad Municipality, in this affidavit-in-reply dated 12th January 1997 has traversed the claim of the petitioner Committee by stating in no uncertain terms that the petitioner Committee is carrying on commercial activity, is earning profit out of it and it is not at all entitled to get any exemption from the levy of House Tax and Education Cess; that the petitioner Committee has yearly income to the tune of Rs.1,25,00,000/- through collection of Cess, licence fee, weigh bridge charges, rent, penalty etc. It has been further stated that the petitioner Committee has made profits of about Rs.1,13,00,000/- in the last year and that it has also constructed a new office building of market yard at the cost of Rs.50,00,000/-. It has also been stated that the petitioner Committee has given donations to the tune of Rs.50,00,000/- in the last year for education and health to different institutions, trust and organisations in the Botad Taluka and City. It has also collected Rs.1.25 crores towards goodwill of 45 godowns and has let out the same on rent at the rate of Rs.300/- and Rs.150/- per month to the traders. In paragraph 3 of the reply affidavit, it has been further stated that the petitioner Committee has let out its premises to Doctors, Bhavnagar District Co-operative Bank, Hospital and has also let out shops and godowns to the traders as per the details given in the statement annexed with this affidavit-in-reply as Annexure.I. It is also the case of the respondent Municipality that the House Tax and Education Cess has to be paid by the tenants to the petitioner as the petitioner is collecting the rent and taxes separately from all the tenants. While making reference to the receipts enclosed with this affidavit-in-reply as Annexure.II, it has been sought to be proved that the liability of payment of House Tax is on the tenants and, therefore, in respect of the rented premises, the petitioner has no cause to make any grievance. It is the categorical case of the respondent Municipality in this respect that the respondent Municipality is levying taxes only in respect of the premises let out on rent by the petitioner and so far as

the premises used by the petitioner for its own purpose or public purpose, the respondent Municipality has not levied any tax.

3. It has been then stated in paragraph 4 of this affidavit-in-reply that the respondent Municipality is collecting taxes under Rules framed by the Municipality under Section 271(1) read with Section 99(1) of the Gujarat Municipalities Act, 1963 and that under the Rules, the petitioner is not at all entitled to get any exemption in respect of the premises which are let out on rent and making profit for the same and it has been reiterated that except the rented premises, the Municipality is not levying any tax against the petitioner, the taxes are paid by the tenants and though the petitioner is collecting taxes from the tenants, the amount is not being passed on to the respondent Municipality and thus, by retaining the legal dues of the Municipality, the petitioner is making profit by using the said amount to its own use and approximately Rs.6 lakhs is due and payable to the respondent Municipality by way of taxes by the tenants of the petitioner which is unlawfully retained by the petitioner. The Botad Municipality has also enclosed the documents with this affidavit-in-reply in support of the submissions made therein.

4. No rejoinder to this affidavit-in-reply dated 12th January 1997 appears to have been filed by the petitioner although this affidavit-in-reply has been served upon the petitioner way back in December 1997 as per the endorsement which appears on this affidavit-in-reply in token of the receipt of the same. This matter is on the Board and the name of the learned Counsel for the petitioner has been duly shown in the Board, nay, the learned Counsel for the petitioner was also sent for through the Chobdar of the Court yesterday, i.e. 5th April 1999, and he was duly informed, but nobody appeared on behalf of the petitioner either yesterday or today.

5. We have heard the learned Counsel for the respondent Municipality and on inquiry being made from the Registry, we are informed that the Special Civil Application No.3492 of 1982 with which this matter was to be heard in terms of this Court's order dated 15th December 1993 has already been decided way back on 8th April 1994.

6. We called for the aforesaid judgment dated 8th April 1994 rendered in Special Civil Application No.3492

of 1982 by a learned Single Judge of this Court and we have gone through the same. The said Special Civil Application was partly allowed. So far as the property tax is concerned, the petition of the Agriculture Produce Market Committee was rejected, but so far as the challenge to the Education Cess is concerned, it was held that because the Agriculture Produce Market Committee was a local authority, the respondents were not empowered to levy or recover the Education Cess from the petitioner Agriculture Produce Market Committee of Gondal. Whereas, in the facts of the present case, it has been brought out on record that the petitioner Committee is using the property in question for the purposes of profit. It is not possible to accept the claim with regard to exemption from Cess in the facts and circumstances of this case. In the case which was decided by the learned Single Judge on 8th April 1994, the judgment does not show that it was pleaded or proved before the Court that the Agriculture Produce Market Committee of Gondal was using the property for the purposes of profit. Section 13(2) of the Gujarat Education Cess Act, 1962 makes it very clear that even if there is any land or building belonging to a local authority, if it is not used solely for public purpose and in case it is used or intended to be used and in case it is actually used for the purposes of profit, it cannot claim the exemption. The aforesaid decision is, therefore, clearly distinguishable and the same has no application to the facts of the present case even for the purpose of allowing the petition with regard to the claim of exemption against the payment of Education Cess.

7. Section 12 of the Gujarat Education Cess Act, 1962 provides for tax on lands and buildings. Section 13 provides for the exemption of certain lands and buildings from payment of taxes. Section 13 of the Gujarat Education Cess Act, 1962 is reproduced as under:

"13. Exemption of certain lands and buildings from payment of tax.- The tax under section 12 shall not be leviable in respect of the following, that is to say--

- (1) buildings and lands vesting in the Central Government;
- (2) Buildings and lands vesting in the State Government, or belonging to a local authority, local board, taluka panchayat, district panchayat or a Cantonment Board and used solely for public purposes and not used or intended to be used for purposes of profit;

(3) any building or land or class of buildings or lands, which the State Government, if it considers it necessary to do so in the public interest, may by notification in the Official Gazette, exempt from payment of the tax under section 12:

Provided that--

- (i) every such notification shall be laid for not less than thirty days before the State Legislature as soon as possible after it is published, and shall be subject to rescission by the State Legislature, or to such modification as the State Legislature may make, during the session in which it is so laid or the session immediately following; and
- (ii) any rescission or modification so made shall be published in the Official Gazette, and shall thereupon take effect."

Section 271(1) and Section 99(1) of the Gujarat Municipalities Act, 1963 are reproduced as under:

"271. Municipalities to make rules.-- A municipality shall make rules not inconsistent with this Act and the rules or orders made by the State Government under this Act, and may from time to time alter or rescind them--

xxx xxx xxx xxx

xxx xxx xxx xxx

- (1) Prescribing taxes.-- prescribing the taxes to be levied in the municipal borough for municipal purposes, the circumstances in which exemption will be allowed, the conditions on which and the extent to which remissions will be granted, and the system on which refunds will be allowed and paid in respect of such taxes; the limits of the charges or payments to be fixed in lieu of any tax under section 119, the fees to be charged for licences or permissions granted under section 118 and giving copies and stamping weights and measures; the fees for notices demanding payments due on account of any tax and for the issue and execution of warrants of distress and the rates to be charged for maintaining any live-stock distrained; and the

mode in which such taxes, charges, payments, fees or rates shall be levied or recovered or be payable and the persons authorised to receive payment of the same and the manner in which auctions of movable and immovable property under section 134 shall be held;"

"Section 99. Taxes which may be imposed.-- (1)

Subject to any general or special orders which the State Government may make in this behalf and to the provisions of section 101 and 102, a municipality may impose for the purposes of this Act any of the following taxes, namely:-

(i) a tax on buildings or lands situate within the municipal borough to be based on the annual letting value or the capital value or a percentage of capital value of the buildings or lands or both;

(ii) to (xi)

(xii) a special Education cess;

(xiii) to (xv)

8. Having heard the learned Counsel for the respondent Municipality and having gone through the pleadings of the parties and the relevant provisions of law, we find that the petitioner Committee cannot claim exemption under Section 13 for the simple reason that even if it is a local authority, the use of the property in question by the petitioner Committee is not without profit. The respondent Municipality has given the details with regard to the profits earned by the petitioner Committee. These details are also supported by the documents and the list of the tenants with the amount of rent which is being collected from each of such tenants. Therefore, in the facts of this case, the petitioner Committee has no entitlement to claim the exemption under Section 13(2) of the Act. Not only that, the petitioner Committee has not even ventured to contest the case of the Municipality. As mentioned in the affidavit-in-reply that the petitioner Committee itself is retaining the legal dues of the Municipality. It is therefore, a strange case in which the petitioner Committee which is a body constituted under the Agricultural Produce Markets Act, 1963 is encroaching upon the rights of the Municipality under the Gujarat Municipalities Act and thereby the money which actually belongs to the Municipality is being retained and made use of by the petitioner Committee. In fact, the

petitioner Committee has no subsisting cause of action to file the present petition and we feel that the Special Civil Application filed by the petitioner Committee is wholly misconceived. Being a body created under the Act, it is not expected to encroach upon the rights of another body which is created under the Act and is functioning as a part of the local self Government. The Municipality has ample powers to collect the taxes under the Rules framed by the Municipality under Section 271(1) read with Section 99(1) of the Gujarat Municipalities Act, 1963 and no statutory body is expected to take any such action or to show a litigious perseverance by way of contesting the Bills issued by a Municipality in accordance with law more particularly when it is the positive case of the Municipality that except the rented premises, the Municipality is not levying any tax against the petitioner Committee.

9. In the facts and circumstances of this case, we find that the petitioner Committee has failed to prove its entitlement with regard to exemption of payment of the House Tax as well as Education Cess and hence, there is no merit in this Special Civil Application. The same is hereby dismissed and it is open for the respondent Municipality to recover its lawful dues with regard to House Tax and the Education Cess etc. in accordance with law with all legal consequences. The Rule is hereby discharged and the ad-interim order dated 15th December 1983 automatically comes to an end.

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